

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

LAWRENCE ROBERT UNZUETA,

Defendant and Appellant.

2d Crim. No. B210978  
(Super. Ct. No. 1254918)  
(Santa Barbara County)

Lawrence Robert Unzueta appeals the judgment following his conviction by jury of criminal threats and misdemeanor vandalism. (Pen. Code, §§ 422, 594, subd. (b)(2)(A).)<sup>1</sup> The court suspended the imposition of sentence and placed appellant on formal probation for a term of 36 months. Appellant challenges the sufficiency of the evidence to support the criminal threats conviction. He also argues that the court erred by failing to instruct the jury regarding the lesser included offense of attempted criminal threats. We affirm.

---

<sup>1</sup> All statutory references are to the Penal Code.

## FACTUAL AND PROCEDURAL BACKGROUND

### *Prosecution Evidence*

Appellant's widowed mother, 63-year-old Georganne Unzueta, lived in a small studio apartment. Appellant, the youngest of her six children, was homeless and occasionally stayed with her. Unzueta had a limited income, including her late husband's pension and social security payments.

On October 21, 2008, appellant was staying with Unzueta. He left her apartment four or more times during the early morning hours to go outside and smoke. This interrupted her rest. Unzueta finally "got fed up" and made coffee, instead of returning to bed. Her other son, Buck, arrived at her apartment after working for 16 hours and took a nap.

At approximately 7:30 a.m., on October 21, appellant took two packages of instant oatmeal from Unzueta's kitchen. She requested that he ask before taking her food, and explained that she had only \$90 left for the week. Appellant "went bananas," started screaming, told her to take her food, and began packing his duffel bag. He stormed around the apartment, with a red face, bulging neck veins, and clenched fists, and threw things around. He called Unzueta a "bitch" and a "whore," said that she was an ugly woman who did not deserve his father's money, or anything, or to live on the planet, and added that he wished she was not his mother. He told her, "I'm going to kill you, bitch, better not turn your back on me, I'm going to beat the hell out of you." He repeated such statements several times.

During appellant's rage, Janet Kaspar, Unzueta's daughter, telephoned her. Kaspar heard appellant yelling. After speaking briefly with Kaspar, Unzueta said that she had to leave the apartment. Unzueta went outside, to the parking lot, and appellant continued to rant. Kaspar telephoned the Santa Barbara police.

In describing her fear of appellant, Unzueta said: "I was really scared. [H]e was standing by the bed and I was by the kitchen and I could see he was ready to hit me and I just said, that's it. I've got to get out of here." "I have never seen

him like that. It was like he was high on something. I've never seen the look in his eyes like I've ever seen in my life." Unzueta returned briefly to the apartment but upon finding that appellant was still yelling about killing her, she left again. Appellant repeated his statement about killing Unzueta when he finally left the apartment, at about 7:50 a.m.

Unzueta returned to the apartment as soon as appellant left. She smelled bleach and found it in her closet, dripping onto the carpet. Every garment in her closet, except for one jacket, was ruined. Although Unzueta stored the bleach bottle under her sink, she found it near her bed.

A Santa Barbara police officer arrived at Unzueta's home at approximately 8:45 a.m., on October 21. Another officer interviewed appellant on November 8, 2007.

Unzueta sought a restraining order against appellant and took other measures to avoid him. She kept her windows closed; when someone knocked on her door, she looked through her blinds before opening the door; and she changed her routes to the bank and grocery store.

#### *Defense Evidence*

Appellant testified that he accidentally spilled bleach while trying to clean his white shoes. He was responsible for the bleach damage to Unzueta's clothing because he did not put the bleach in the right place after using it. Although he and Unzueta were angry at each other on October 21, he did not say that he was going to kill her.

#### DISCUSSION

Appellant contends that the evidence is insufficient to support his criminal threats conviction. This contention fails.

In reviewing an insufficient evidence claim, we consider the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence such that a reasonable jury could find the defendant guilty beyond a reasonable doubt. (*People v. Wallace* (2008) 44 Cal.4th 1032, 1077.) We

presume the existence of every fact supporting the judgment that the jury reasonably could have deduced from the evidence, and a judgment will be reversed only if there is no substantial evidence to support the verdict under any hypothesis. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139; *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) Here, we conclude that sufficient evidence supports appellant's criminal threats conviction.

Section 422 makes it a crime to "willfully threaten[] to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety . . . ." (See also *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.)

Appellant argues that there is insufficient evidence that the alleged threats conveyed to Unzueta a gravity of purpose and immediate prospect of execution, and that the alleged threats caused her fear. He states that a criminal threat is a verbal crime which must be committed with words. He claims that here there is no evidence that his words contributed to Unzueta's fear because she testified about his "actions and appearance," but "did not mention his words as a cause of fear."

While Unzueta did not expressly testify that appellant's words caused her fear, the evidence supports the reasonable inference that his words frightened her. The statutory definition of a criminal threat includes the circumstances in which the threat is made. (§ 422.) Unzueta testified that while appellant acted and appeared as she described, he threatened to kill her at least four times. In addition, after fear drove her away, she tried to return to her apartment but decided not to do so because appellant was still yelling that he would kill her.

Appellant stresses that Unzueta's responses to his statements were inconsistent with her perceiving them as threats. He argues that she did not want to call the police, and that while appellant was ranting, she told him to stop. She also told his sister that he was "over tired" and that he was not thinking.

But Unzueta's other responses establish that she perceived appellant's statements as threats. For example, she left her apartment while appellant was threatening her. After appellant left, Unzueta sought a restraining order against him and took other measures to avoid him.

Relying primarily upon *In re Ricky T.* (2001) 87 Cal.App.4th 1132, appellant claims that the delayed police response to the threat complaint indicates that his statements did not convey a gravity of purpose or imminence of execution. In *Ricky T.*, a minor cursed his teacher and stated that he was going to "get" him after the teacher opened a door and accidentally struck him. (*Id.* at p. 1137.) The victim acknowledged there was no specific threat. The minor denied threatening the victim, stating he did not mean to sound threatening. The police were not called until the following day. The court observed that "[t]he lack of surrounding circumstances [was] striking." (*Ibid.*) The appellate court concluded that the remark, "I'm going to get you," was "ambiguous on its face and no more than a vague threat of retaliation without prospect of execution. [Citation.]" (*Id.* at pp. 1137-1138.)

Here, in contrast, there was nothing ambiguous about appellant's words. He threatened to kill Unzueta at least four times, and the police responded to the threat complaint on October 21, shortly after appellant made his threats. Nor was there any lack of surrounding circumstances. Substantial evidence supports the criminal threats conviction.

Appellant next contends that the court violated his federal and state constitutional right to due process by failing to instruct the jury sua sponte on the lesser included offense of attempted criminal threats. We also reject this contention.

Appellant concedes that no such instruction was requested. He cites *Toledo* for his claim that the trial court had a sua sponte duty to instruct the jury that "attempted criminal threat" is a lesser included offense because there was substantial evidence from which the jury could have concluded that the lesser offense, and not the greater, was committed. (See, e.g., *People v. Breverman* (1998) 19 Cal.4th 142, 154-155.)

In *Toledo*, the Supreme Court rejected defendant's claim that his attempted criminal threat conviction must be reversed because there is no such crime in California. The Court held that the defendant was properly convicted of an attempted threat because the jury could have reasonably found that the victim "was not frightened by [his] statements." (*People v. Toledo, supra*, 26 Cal.4th at p. 235.) At trial, the victim had denied "that she had entertained any fear of defendant on the evening in question." (*Id.* at p. 225.)

*Toledo* sustains appellant's argument that there is a crime of attempted criminal threat which, under some circumstances, may constitute a lesser included offense where there may be a sua sponte duty to instruct the jury. But it does not establish that such a duty arose here.

Appellant argues that the court had the sua sponte duty to instruct on attempted criminal threat because reasonable jurors could have found that the elements of criminal threat, gravity and causation, were missing. On his missing "gravity" claim, he argues that Unzueta's responses would allow a jury to find that his words "did not convey gravity of purpose or imminence of execution and did not cause fear." This argument would be colorable but for the evidence that appellant repeatedly threatened to kill Unzueta, she left her apartment, sought a restraining order, and took other actions to avoid him.

In arguing that causation is missing, appellant stresses that Unzueta did not expressly testify that his words caused her fright. A criminal threat is considered "on its face and under the circumstances in which it is made." (§ 422.) Reasonable jurors would readily find appellant's threats caused Unzueta's fear

"under the circumstances in which [they were] made." (*Ibid.*) He threatened to kill her at least four times before she left the apartment, while taking actions that frightened her, and she tried to return but again left, upon finding that he was still threatening to kill her.

The judgment is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

PERREN, J.

Brian E. Hill, Judge

Superior Court County of Santa Barbara

---

David P. Lampkin, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan  
Sullivan Pithey, Supervising Deputy Attorney General, Nima Razfar, Deputy Attorney  
General, for Plaintiff and Respondent.